

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Northern Border Pipeline Company

Docket No. RP03-507-001

ORDER ON COMPLIANCE

(Issued November 18, 2003)

1. On July 30, 2003, Northern Border Pipeline Company (Northern Border) filed revised tariff sheets to comply with the Commission's order issued on June 30, 2003.¹ In that order, the Commission conditionally accepted Northern Border's proposal to establish a tariff provision to reserve capacity for future expansion or extension projects and to clarify contract term extension rights for interim shippers under Section 5 of Rate Schedule T-1. In this order, the Commission finds that Northern Border generally complied with the directives in the June 30 Order. The Commission, however, will require additional revisions to modify tariff provisions that are inconsistent with our policy. This order benefits customers because it ensures that Northern Border's tariff conforms to Commission requirements and policy.

I. Background

2. On May 30, 2003, Northern Border filed revised tariff sheets proposing to add a new Section 26.5, "Reservation of Capacity for Company's Expansion/Extension Projects", that would permit the pipeline, under certain conditions, to reserve capacity. Northern Border explained that it would only reserve such capacity for a future expansion or extension project. The reservation would commence within the 12-month period before Northern Border files for certificate approval for construction of the proposed expansion or extension facilities, and continue through the certificate filing, ending when such expansion or extension facilities are placed in service.

3. Additionally, Northern Border explained that if an expansion or extension project did not go forward, it would repost the capacity as generally available capacity within

¹Northern Border Pipeline Co., 103 FERC ¶ 61,390 (2003) (June 30 Order).

30 days of the date that capacity becomes available. The previously reserved capacity would become available when the pipeline posts the capacity on its web site. However, Northern Border would not repost previously reserved capacity which was committed in a written agreement(s) entered into because of an open season for an anticipated expansion or extension project where it could provide the capacity under such agreement either with no construction or with construction that is authorized pursuant to Northern Border's blanket certificate. Northern Border explained that it requires this provision to assure that any shipper that executes a precedent agreement because of an open season will retain its right to capacity reserved for an anticipated expansion or extension project that does not ultimately require Northern Border to file a certificate application.

4. In the June 30 Order, the Commission accepted Northern Border's proposed tariff revisions, subject to conditions. Northern Border's proposed language allows capacity reservation for expansion or extension projects for 12-months before filing a certificate application "and following the certificate filing, until all expansion/extension facilities are placed into service." The Commission found that the term "all" could be misinterpreted to include facilities unrelated to the capacity reservation. We therefore directed Northern Border to revise this language to clarify that capacity may be reserved only until the expansion or extension facilities related to the certificate filing, for which the capacity was reserved, are placed in service.²

5. The Commission also approved Northern Border's proposal that, if a project does not go forward, that capacity that was committed in writing in a precedent agreement or a service agreement because of an open season would not require re-posting.³ However, in contrast, the Commission also found that Northern Border must specify that any capacity that was not part of an open season would require re-posting with respect to any expansion or extension project that is not going forward, even if there were written agreements for such capacity.

6. In addition, the Commission directed Northern Border to revise its tariff to provide that its existing customers will not bear any costs of the reserved capacity to which they did not subscribe.⁴

²Id. at P 19.

³Id. at P 18.

⁴Id. at P 21.

II. Compliance Filing

7. In compliance with the June 30 Order, Northern Border filed revised tariff sheets implementing all of the Commission's directives.
8. Public notice of Northern Border's filing was issued on August 6, 2003. A timely limited protest was filed by the Process Gas Consumers Group (PGC).
9. PGC does not believe Northern Border sufficiently clarified that capacity may be reserved only until the expansion or extension facilities related to the certificate filing for which the capacity was reserved are placed into service. PGC suggests that Northern Border can resolve this uncertainty by revising the second paragraph in Section 26.5 of Northern Border's tariff to state:

Capacity may be reserved for expansion/extension projects only during a 12-month period prior to Company filing for certificate approval for construction of proposed expansion/extension facilities, and following the certificate filing, only until all expansion/extension facilities related to the certificate filing are placed into service.

III. Discussion

10. The Commission finds that Northern Border has generally complied with the directives in the June 30 Order. However, the Commission agrees with PGC that Northern Border's revision to Section 26.5 is not entirely clear. The Commission finds that PGC's proposed language will sufficiently address our concerns, and we direct Northern Border to incorporate this language into its tariff.
11. Upon further review of Northern Border's compliance filing, the Commission has determined that it incorrectly addressed several issues in the June 30 Order. First, the Commission erred in its determination that capacity that is committed in writing in the form of precedent agreement or a service agreement as a result of an open season for the expansion will not require re-posting if the expansion does not go forward. The Commission now finds that if an expansion or extension project does not go forward, then Northern Border should post any reserved capacity as generally available without regard to any executed precedent agreements for the now defunct expansion.
12. The Commission recently addressed this issue in an order issued in Northern Natural Pipeline Company (Northern).⁵ In that order, the Commission found that if an

⁵Northern, 105 FERC ¶ 61,057 at P 19-26 (2003).

expansion project does not go forward, then all parties who desire that capacity should be able to bid for it on an equal basis based on their current needs. The Commission explained that a substantial amount of time is likely to have passed since the parties' previous opportunities to bid on the capacity. Northern Border may reserve capacity up to 12 months before it files a certificate application and thereafter until either the in-service date of the expansion or a determination that the project will not go forward. As a result, the reservation of capacity could last for a year, or significantly longer, before a decision not to go forward. During that time period the needs of the parties may have changed significantly. Also the expansion open season may have included conditions not applicable to the reposting of the capacity after the pipeline terminates the project. The Commission concludes that shippers whose circumstances may have changed in the potentially lengthy intervening period should receive an opportunity to bid on this capacity without Northern Border's requested preference for shippers with certain precedent agreements.

13. Therefore, we reject Northern Border's proposed language regarding the exemption for posting for capacity committed by certain precedent agreements. Northern Border must eliminate this language consistent with the discussion above, within 30 days of the date this order issues.

14. Second, the June 30 Order mistakenly directed Northern Border to revise its tariff to provide tariff language stating that its existing customers will not bear any of the costs of the reserved capacity to which they did not subscribe. However, in earlier orders, the Commission determined that such a tariff provision was unnecessary.⁶ Therefore, Northern Border may remove this language from Section 26.5 when it files the other changes directed by this order.

15. Finally, the Commission will require Northern Border to revise Section 26.5 to clarify that Northern Border will offer any capacity reserved under this Section on a limited term basis up to the in-service date of the expansion project(s). This minor tariff revision will ensure that Northern Border's tariff is consistent with our prior decisions.⁷

⁶See *Id.* at P 33-39; Columbia Gulf Transmission Co., 101 FERC ¶ 61,355 at P 26 (2002); and Columbia Gas Transmission Corp., 101 FERC ¶ 61,380 at P 26 (2002).

⁷Northern, 105 FERC ¶ 61,057 at P 31-32.

The Commission orders:

(A) Northern Border's compliance filing is conditionally accepted, subject to modification, as discussed in the body of this order.

(B) Northern Border is hereby directed, within 30 days of the date this order issues, to file revised tariff sheets consistent with the discussion in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.